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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,853	12/06/2000	James M. Hair III	PM 0271810	7885

909 7590 08/21/2002

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EXAMINER

LESTER, EVELYN A

ART UNIT

PAPER NUMBER

2873

DATE MAILED: 08/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/729,853

Applicant(s)

HAIR ET AL.

Examiner

Evelyn A. Lester

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-130 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 58-130 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,6,8.

- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

EVELYN A. LESTER

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 98-103, 108 and 109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muehlberger (U.S. patent 5,303,844) in view of Percy et al (U.S. patent 5,651,476).

Muehlberger is interpreted as disclosing the claimed invention of a vending machine (10) having a transparent front portion (col. 1, lines 28-29), a helical dispensing mechanism (76; Fig. 4) configured to dispense a product selected by a consumer, a vend space (i.e. chute; Fig. 4) comprising a portion of the space in the vending machine through which the selected product will automatically fall into a bin portion (68, 70) for retrieval by the consumer, a sensor system (80) configured to sense when the selected product passes through the vend space, and a control mechanism configured to control the dispensing as a function of the sensor system. However, Muehlberger does not specifically disclose what kind of sensor is used for the sensor system. Percy et al teaches an optical vend sensing system, and further teaches at column 4, lines 2-4, that

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while an optical sensor is described by Percy et al, it will be appreciated that a variety of other sensors may also be employed. Therefore, regardless of the silent teaching of Muehlberger as to the type of sensor used. Percy et al teach that one of ordinary skill in the art would have known to use an optical sensor, or any other sensor that is known, in order to provide the required sensed passing of a dispensed article. Since Muehlberger explicitly teaches the need of a sensor system, in light of Percy et al, it would have been well known to one of ordinary skill in the vending machine art at the time the invention was made to utilize Percy et al's optical sensor in Muehlberger's vending machine.

With respect to claims 98-100, please note the invention summary in columns 1-2.

With respect to claim 101, please note Figure 5.

With respect to claims 102, 103, 108 and 109, please note at column 5, lines 16-64.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 58-130 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent No. 6,384,402. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention of the application is only a variation of the patented claimed invention.

The application claimed invention, having been amended beyond the originally filed claims (which were held to a restriction requirement), is an obvious variation of the invention disclosed and claimed in the patent. The application claimed invention is directed to a vending machine (i.e. claim 98) and/or an optical vend-sensing system (i.e. claim 78) having a dispensing unit and vend-space, as well as the optical vend-sensing system with an emitter and a detector, and a control mechanism, all of which are part of the patented claimed invention. The variations in the claims are considered to be obvious, because though the patent disclosure may not be used as prior art, the disclosure may be used to answer obvious variation question because it is difficult to try and say what is an obvious variation of a claim. The disclosure sets forth at least one tangible

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embodiment within the claims, and is therefore less difficult and more meaningful to judge whether the disclosed embodiment has been modified in an obvious manner. Please note *In re Vogel and Vogel*, 164 USPQ 619-623 (CCPA 1970).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to E.A. Lester whose telephone number is (703) 308-4943. The examiner can normally be reached on Monday-Friday from about 9:30 am to 6 pm (subject to an extended flex schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps, can be reached on (703) 308-4883. The fax number for Technology Center 2800 is (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.


Evelyn A. Lester
Primary Examiner
AU 2873
August 9, 2002